Kesatuan Kebangsaan Wartawan Malaysia & Anor v Syarikat Pemandangan Sinar Sdn Bhd & Anor

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–14 OF 2000–W

STEVE SHIM CJ (SABAH & SARAWAK), MOHAMED DZAIDDIN AND ABU MANSOR FCJJ

27 JUNE 2001

Labour Law *— Trade union — Collective agreement — Whether binding on successors, assignees or transferees of union of employers to whom agreement relates — Application of s 17(1)(a) Industrial Relations Act 1967 — Intention of legislature for continuity of collective agreement*

Sin Poh and the National Union of Journalists Malaysia ('the NUJ') entered into a collective agreement that was given cognizance by the Industrial Court. Sin Poh suffered huge financial losses. Later, it was placed under a receivership and receivers and managers from PriceWaterhouse were appointed. Sin Poh's publishing permit for '*Sin Chew Jit Poh Malaysia*' was cancelled by the Minister of Home Affairs and the permit to publish the same newspaper was later found to have been given to Sykt Pemandangan Sinar Sdn Bhd ('the first respondent'), a company with a paid-up capital of only RM2 which then re-employed most of Sin Poh's employees. Next, the receivers and managers of Sin Poh entered into a sale and purchase agreement with the second respondent, Sykt Rimbunan Hijau Estate, to sell all the physical assets of Sin Poh to the second respondent. Meanwhile, the NUJ had referred a complaint of non-compliance of the collective agreement to the Industrial Court, for which an award was obtained. The NUJ also applied for an interpretation of cl 1 of the collective agreement, in order that the first and second respondents may be included as Sin Poh's successors, assignees or transferees. The issue before this court was whether the words 'their successors, assignees or transferees' appearing in s 17(1)(a) of the Industrial Relations Act 1967 ('the IRA') mean the successors, assignees or transferees of: (i) parties to the agreement; or (ii) members of the trade union of employers to whom the collective agreement relates; or to both (i) and (ii) above.

Held:

(1) The IRA is a piece of social legislation whose primary aim is to promote social justice, industrial peace and harmony in the country. As such, the approach to interpretation must be liberal in order to achieve the object aimed at by Parliament (see pp 710I–711A).

(2) Under s 17(1)(b) of the IRA, all employees are bound whether or not they are members of the union which negotiated the collective agreement, or whether they join as employees subsequent to the date of the collective agreement. This provision in the IRA cuts

across the law of contract and is meant for the general application of the collective agreement on all the employees of a company. The same approach must apply to s 17(1)(a) of the IRA involving employers. The rationale is one of continuity of the collective agreement from the original parties and members of the union to their successors, assignees or transferees. It is meant to ensure that the rights and obligations of the parties to the collective agreement be preserved by those taking over from the original parties so as to maintain good relationship and fair dealings between the employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship (see p 711D–G).

(3) Clearly therefore, given the intention of the legislature, s 17(1)(a) of the IRA must be construed to embrace the successors, assignees or transferees of both parties to the collective agreement, and the members of the trade union of employers to whom the collective agreement relates. Such a construction has the effect of promoting the general legislative purpose underlying the provision stated above (see p 711G–H).

[Bahasa Malaysia summary

Sin Poh dan Kesatuan Kebangsaan Wartawan Malaysia ('NUJ') telah memasuki satu perjanjian kolektif di mana Mahkamah Perusahaan telah mengambil perhatian tentangnya. Sin Poh telah mengalami kerugian yang amat besar. Kemudiannya, ia telah diletakkan di bawah kuasa penerima dan peneriman-penerima dan pengurus-pengurus daripada PriceWaterhouse telah dilantik. Permit penerbitan Sin Poh untuk '*Sin Chew Jit Poh Malaysia*' telah dibatalkan oleh Menteri Dalam Negeri dan permit untuk menerbit akhbar yang sama kemudiannya telah didapati diberikan kepada Sykt Pemandangan Sinar Sdn Bhd ('responden pertama') sebuah syarikat dengan modal berbayar hanya RM2 yang kemudiannya telah mengambil semula kebanyakan daripada pekerja-pekerja Sin Poh. Selepas itu, penerima-penerima dan pengurus-pengurus Sin Poh telah memasuki satu perjanjian jual beli dengan responden kedua, Sykt Rimbunan Hijau Estate, untuk menjual semua aset fizikal Sin Poh kepada responden kedua. Sementara itu, NUJ telah merujuk satu aduan tentang ketidakpatuhan perjanjian kolektif tersebut kepada Mahkamah Perusahaan, di mana award telah diperolehi. NUJ juga memohon satu penafsiran kl 1 perjanjian kolektif, bagi tujuan responden-responden pertama dan kedua dimasukkan sebagai pengganti-pengganti, pemegang-pemegang serahhak atau penerima-penerima pindahan Sin Poh. Persoalan yang dihadapkan ke mahkamah adalah sama ada perkataan-perkataan 'pengganti-pengganti, pemegang-pemegang serahhak atau penerima-penerima pindahan mereka' yang timbul dalam s 17(1)(a) Akta Perhubungan Perusahaan 1967 ('IRA') bermaksud pengganti-pengganti, pemegang-pemegang serahhak atau

penerima-penerima pindahan bagi: (i) pihak-pihak kepada perjanjian; atau (ii) ahli-ahli kesatuan sekerja pekerja-pekerja yang berkaitan dengan perjanjian kolektif; atau kedua-dua (i) dan (ii) seperti di atas.

Diputuskan:

(1) IRA adalah satu perundangan sosial yang mempunyai tujuan utama untuk menggalakkan keadilan sosial, ketenteraman dan keharmonian perusahaan di dalam negara. Oleh demikian, pendekatan kepada penafsiran tersebut mestilah bersifat liberal bagi tujuan mencapai objektif yang ingin dicapai oleh Parlimen (lihat ms 710I–711A).

(2) Di bawah s 17(1)(b) IRA, semua pekerja terikat sama ada atau tidak mereka adalah ahli-ahli kesatuan yang telah berunding mengenai perjanjian kolektif tersebut, atau sama ada mereka menyertai sebagai pekerja-pekerja berikutan tarikh perjanjian kolektif tersebut. Peruntukan ini dalam IRA bertentangan dengan undang-undang kontrak dan ia bermaksud untuk pemakaian umum perjanjian kolektif ke atas semua pekerja sebuah syarikat. Pendekatan yang sama mestilah digunakan kepada s 17(1)(a) yang melibatkan majikan-majikan. Rasionalnya adalah satu kesinambungan perjanjian kolektif daripada pihak-pihak dan ahli-ahli asal kesatuan kepada pengganti-pengganti, pemegang-pemegang serahhak atau penerima-penerima pindahan mereka. Ini bertujuan untuk memastikan bahawa hak-hak dan tanggungjawab-tanggungjawab pihak-pihak kepada perjanjian kolektif dikekalkan oleh mereka yang mengambil alih daripada pihak-pihak asal bagi mengekalkan hubungan baik dan urusan-urusan yang adil antara majikan-majikan dan pekerja-pekerja dan kesatuan sekerja mereka, dan penyelesaian apa-apa perbezaan atau pertikaian yang timbul daripada hubungan mereka (lihat ms 711D–G).

(3) Oleh itu adalah jelas, memandangkan niat perundangan tersebut, s 17(1)(a) IRA mestilah ditafsirkan sebagai merangkumi pengganti-pengganti, pemegang-pemegang serahhak atau penerima-penerima pindahan kedua-dua pihak kepada perjanjian kolektif tersebut, dan ahli-ahli kesatuan sekerja majikan-majikan yang berkaitan dengan perjanjian kolektif tersebut. Pembentukan sebegini mempunyai kesan yang menggalakkan tujuan perundangan am yang menjadi dasar peruntukan yang dinyatakan (lihat ms 711G–H).]

Notes

For cases on collective agreement generally, see 8(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1397–1402.

Cases referred to

Application By Dunlop Estates Bhd, Re [1980] 1 MLJ 243 (refd)

Dunlop Estate Bhd v All Malayan Estates Staff Union [1980] 1 MLJ 243 (refd)
Nothman v Barnet London Borough Council [1978] 1 WLR 220 (refd)
Seafood Court Estates v Asher [1949] 2 All ER 155 (refd)

Legislation referred to

Industrial Relations Act 1967 ss 17(1)(a), 33(1)

Appeal from: Civil Appeal No W–02–300–1995 (Court of Appeal, Kuala Lumpur)

Ramdas Tikamdas (*Siva, Ram & Associates*) for the appellant.
Ambiga Sreenevasan (*Siva Kumar Kanagasabai* with her) (*Skrine & Co*) for the respondent.

Steve Shim CJ (Sabah & Sarawak). : This appeal concerns the interpretation or construction of s 17(1)(a) of the Industrial Relations Act 1967 ('the IRA'), and in particular the meaning of the words 'their successors, assignees or transferees' appearing therein.

The background facts

In this case, Sin Poh (Star News) Amalgamated Malaysia Sdn Bhd ('Sin Poh') had a permit to publish the newspaper called *Sin Chew Jit Poh Malaysia*. On 27 April 1987, Sin Poh and the National Union of Journalists Malaysia ('NUJ') (the first appellant) entered into a collective agreement which was duly given cognizance by the Industrial Court on 2 May 1987, vide cognizance No 71/87. Sin Poh suffered losses amounting to over RM12m. On 3 September 1987, Sin Poh was placed under receivership, and receivers and managers from Price Waterhouse were appointed. On 28 October 1987, Sin Poh's publishing permit for *Sin Chew Jit Poh Malaysia* was cancelled by the Minister of Home Affairs. However, on 23 March 1988, the said minister issued the permit for publishing the same newspaper to Syarikat Pemandangan Sinar Sdn Bhd ('the first respondent'), a company with a paid up capital of only RM2 which then reemployed 85% of Sin Poh's employees. On 6 April 1988, the receivers and managers of Sin Poh entered into a sale and purchase agreement with Syarikat Rimbunan Hijau Estate Sdn Bhd ('the second respondent') whereby all the physical assets of Sin Poh including land, buildings, plants, machineries, vehicles and stock-in-trade, as well as the product name of *Sin Chew Jit Poh* were sold by the receivers and managers to the second respondent. It is to be noted that the first respondent was, at all material times, the subsidiary of the second respondent.

In the meantime, on 5 April 1988, the first appellant ('NUJ') had referred a complaint of non-compliance of the collective agreement to the Industrial Court. Pursuant to this complaint, the Industrial Court handed down Award No 126/88 (see appeal record, Vol 2 on pp 265–271). On 9 May 1988, NUJ also applied for interpretation of clause I of the collective agreement under s 33(1) of the IRA in an attempt to include the first and

second respondents as Sin Poh's successors, assignees or transferees. The Industrial Court handed down its Award No 244/88 (see appeal record, Vol 2 at pp 273–279). The first and second respondents thereafter moved a motion in the High Court to have the award quashed. The motion was granted. In quashing the award, the High Court ordered the question whether the first respondent or the second respondent or both was/were the successors, assignees or transferees of Sin Poh be reheard by the Industrial Court, but in doing so, it upheld the interpretation of s 17(1)(a) of the IRA adopted by the Industrial Court. Against that decision, the respondents appealed to the Supreme Court. The appeal was allowed and the Industrial Court was directed to rehear all the issues afresh.

Pursuant to the said order of the Supreme Court, the Industrial Court reheard the matter and handed down Award No 190/93 (see appeal record, Vol 2 at pp 513–521). In the said award, it was held, inter alia, that upon an interpretation of s 17(1)(a) of the IRA, the respondents, being successors, assignees or transferees of a party to the collective agreement, were bound by it. Unhappy with that decision, the respondents thereafter filed a notice of motion dated 19 October 1993 to the High Court to quash the said award. On 21 April 1995, the High Court dismissed the respondent's application with costs. The respondents then lodged an appeal to the Court of Appeal. On 4 September 1997, the Court of Appeal allowed the appeal and quashed the said award. NUJ and the Industrial Court (the appellants), being dissatisfied with the decision, then applied for and were granted leave by the Federal Court on 10 May 2000 to appeal on the following question of law:

> Whether the words 'their successors, assignees or transferees' appearing in s 17(1)(a) of the Act mean the successors, assignees or transferees of:
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> (i) parties to the agreement, or
>
> (ii) members of the trade union of employers to whom the collective agreement relates; or
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> (iii) to both (i) and (ii) above.

The issues

It seems clear that the preliminary issue, if not the sole issue, on which leave to appeal has been granted relates essentially to the construction of s 17(1)(a) of the IRA which deals with the effect or effects of a collective agreement which has been taken cognizance of by the Industrial Court. Now, the Court of Appeal, in reversing the decision of the High Court dated 21 April 1995, and quashing the Industrial Court Award No 190/93, has construed s 17(1)(a) of the IRA quite narrowly. This is reflected in that part of the judgment of the Court of Appeal which reads:

> Going back to s 17(1) of the Act, what it really says is that a collective agreement which has been taken cognizance of by the court, as in this case, shall be deemed to be an award and shall be binding on 'the parties to the agreement'. It is in para (a), specifically, that the interpretation thereof appears to have raised a problem.

> In our considered view, the words 'successors, assignees or transferees' therein cannot relate to the words 'the parties to the agreement' but only to 'party' and 'members' which appear after the word 'including'. Otherwise, there ought to be commas after the word 'agreement' in the first line and 'relates' in the fourth line. Consequently, only where 'the parties to the agreement' include a party which 'is a trade union of employers' then, and only then, it will be binding on 'all members of the trade union to whom the agreement relates and their successors, assignees or transferees', the word 'their' there referring specifically to the members of the trade union of employers, which the appellants are not, as they are individual employers. Further, if the first respondent is correct and the liberal rule is to apply the words 'and their successors, assignees or transferees' should actually appear after the word 'agreement' in the first line and not at the end. As such, it is our finding that the collective agreement in this case cannot apply to the appellants as it can apply to the parties to the agreement which they are not, but where it involves a trade union of employers, and it is not disputed that the appellants and Sin Poh are not, it will also apply to its members and their successors, assignees or transferees.

It is contended by counsel for the appellants that the Court of Appeal had construed s 17(1)(a) of the IRA erroneously in that it was overly preoccupied with punctuation marks in the construction of the said section, and had completely overlooked the purposive approach and the general legislative purpose in construction. However, counsel for the respondents takes the view that the construction adopted by the Court of Appeal is correct.

The law

In construing a statute, the intention of Parliament must not only be deduced from the language used but also from the social and economic conditions which gave rise to it and the mischief it was meant to remedy (see *Re Application By Dunlop Estates Bhd* [1980] 1 MLJ 243; *Seafood Court Estates v Asher* [1949] 2 All ER 155 at p 164). It is well settled in the area of law governing statutory interpretation and construction that each legislation must be construed in its own light. In enacting legislation, Parliament is invariably prompted by considerations and demands peculiar to the circumstances for which the enactment is made. To determine the legislative intent, each statute must be examined on its own against the background in which it was passed. We would adopt the observations of Mohd Azmi J (as he then was) in *Dunlop Estate Bhd v All Malayan Estates Staff Union* [1980] 1 MLJ 243, who said, inter alia at p 246:

> In my view, having regard to the principles enunciated in the cases cited, the Industrial Relations Act, being a social legislation enacted with the prime object of attaining social justice and industrial peace, demands practical and realistic interpretation whenever necessary for the purpose of maintaining good relationship and fair dealings between employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship.

Quite clearly, the IRA is a piece of social legislation whose primary aim is to promote social justice, industrial peace and harmony in the country. As such, the approach to interpretation must be liberal in order to achieve the

object aimed at by Parliament. This had been described by Lord Diplock as the 'purposive approach', an approach followed by Lord Denning in *Nothman v Barnet London Borough Council* [1978] 1 WLR 220, who reiterated that in all cases involving the interpretation of statutes, we should adopt a construction that would promote the general legislative purpose underlying the provision. We accept that to be the correct approach.

Construction of s 17(1)(a) of the IRA

Now, s 17(1)(a) of the IRA reads as follows:

> (1) A collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on:
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> (a) the parties to the agreement including in any case where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and
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> (b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

It is accepted that a collective agreement is one entered into between the employer and its employees or union of workmen normally for a period of three years. Under s 17(1)(b) of the IRA, all employees are bound whether or not they are members of the union which negotiated the collective agreement, or whether they join as employees subsequent to the date of the collective agreement. This provision in the IRA cuts across the law of contract and is meant for the general application of the collective agreement on all the employees of a company. In our view, the same approach must apply to s 17(1)(a) of the IRA involving employers. The rationale is one of continuity of the collective agreement from the original parties and members of the union to their successors, assignees or transferees. It is meant to ensure that the rights and obligations of the parties to the collective agreement be preserved by those taking over from the original parties so as to maintain what Mohd Azmi J in *Dunlop Estate Bhd* has aptly described as 'good relationship and fair dealings between the employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship.' And we may add that this is essential in promoting social justice, industrial peace and harmony in Malaysia.

Clearly therefore, given the intention of the legislature, s 17(1)(a) of the IRA must be construed to embrace the successors, assignees or transferees of both parties to the collective agreement, and the members of the trade union of employers to whom the collective agreement relates. Such a construction has the effect of promoting the general legislative purpose underlying the provision stated above.

Conclusion

In the circumstances, we are, with respect, unable to agree with the view expressed by the Court of Appeal that the words 'successors, assignees or

transferees' in s 17(1)(a) of the IRA cannot relate to the words 'the parties to the agreement', but only to 'party' and 'members' which appear after the word 'including'. We are of the unanimous view that the words 'their successors, assignees or transferees' therein must mean the successors, assignees or transferees of the parties to the collective agreement, as well as the members of the trade union of employers to whom the collective agreement relates. For the reasons given, we hold that the Court of Appeal has misconstrued s 17(1)(a) of the IRA accordingly.

Given the conclusions aforesaid, counsel for the appellants has urged us to affirm Industrial Court Award No 196/93 and the judgment of the High Court dated 21 April 1995 which have held, on the established facts before them, that the respondents are the successors, assignees or transferees of Sin Poh, and therefore bound by the collective agreement dated 27 April 1987 (Cognizance No 71/87). In rebuttal, counsel for the respondents contended that the appellants must confine themselves to the issue or question for which leave to appeal was granted by the Federal Court under r 108(1)(c) Rules of the Federal Court, and drawing particular attention to the fact that the Court of Appeal had made a finding of fact that the respondents were not the successors, assignees or transferees of Sin Poh. According to counsel, any challenge to that finding of fact would clearly militate against the scope of the issue which has been referred to the Federal Court for determination.

Although leave was granted on a question of law relating to the proper construction of s 17(1)(a) of the IRA, it is, in effect, a determination as to whether or not the Court of Appeal had construed the section correctly. We have held, for the reasons given, that the Court of Appeal had not done so. And having construed the said section in the manner it did, the Court of Appeal came to the following conclusion:

> Having interpreted s 17(1) of the Act in this manner and after deliberating dutifully on the arguments and authorities, we came to the unanimous conclusion that the appellants are not the successors, assignees or transferees of Sin Poh and are not bound by the collective agreement to which Sin Poh was a party.

It seems clear that the above conclusion was arrived at principally upon the construction which the Court of Appeal had placed on s 17(1)(a) of the IRA. It is our view that the Court of Appeal would not have come to such a conclusion if it had not misconstrued the said section.

In the circumstances and for the reasons stated, we will allow the appeal with costs here and below.

Order accordingly.

Reported by Wong Ee Lynn